

MALTA

ATT Nru. V ta' l-1997

ACT No. V of 1997

ATT mahruġ b'ligi mill-Parlament ta' Malta.

AN ACT enacted by the Parliament of Malta.

ATT biex jawtorizza lill-Gvern jirratifika l-Konvenzjoni dwar il-Projbizzjoni ta' l-Iżvilupp, Produzzjoni, Hażna u Użu ta' Armi Kimiċi u l-Qerda tagħhom, biex jipprovdi għall-implimentazzjoni minn Malta tad-dispożizzjonijiet relattivi u għas-shubija ta' Malta fl-Organizzazzjoni għall-Projbizzjoni ta' Armi Kimiċi, u dwar hwejjeg li għandhom x'jaqsmu ma' dan jew li huma anċillari għal dan.

AN ACT to authorise the Government to ratify the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, to provide for the implementation by Malta of its provisions and for Malta's membership of the Organisation for the Prohibition of Chemical Weapons, and for matters connected therewith or ancillary thereto.

I assent.

(L.S.)

Ugo MIFSUD BONNICI
President

28th April, 1997

ACT No. V of 1997

AN ACT to authorise the Government to ratify the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, to provide for the implementation by Malta of its provisions and for Malta's membership of the Organisation for the Prohibition of Chemical Weapons, and for matters connected therewith or ancillary thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Ratification of Chemical Short title.
Weapons Convention Act, 1997.

2. (1) In this Act, unless the context otherwise requires — Interpretation.

“Aircraft” has the same meaning which is given to it in Cap. 232.
the Civil Aviation Act;

“Convention” means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed on behalf of Malta on the 13 January, 1993, in Paris, being a convention, a copy of the English text of which is set out in the Schedule to this Act;

“Director” means the director of the National Authority for the purposes of this Act;

“Director General” means the Director General of the Technical Secretariat;

“Minister” means the Minister responsible for Foreign Affairs and Environment;

“National Authority” means the body established by the Minister to act as the Maltese National Authority in accordance with Article VII of the Convention;

“National Authority Inspector” means a person declared pursuant to section 5 of this Act;

“OPCW Inspector” means a person designated pursuant to the Convention as an inspector or inspection assistant;

“Organisation” and “OPCW” means the Organisation for the Prohibition of Chemical Weapons established pursuant to the provisions of the Convention, and its constituent bodies;

Cap. 234. “Ship” has the same meaning which is given to it in the Merchant Shipping Act;

“Technical Secretariat” means the technical secretariat of the OPCW established pursuant to Articles VII and VIII of the Convention.

(2) Any other term or expression used in this Act and in the Convention has in this Act the same meaning as in the Convention.

Government
authorised
to ratify the
Convention.
Cap. 304.

3. (1) In virtue of this Act, and in compliance with the provisions of the Ratification of Treaties Act, the Government of Malta is hereby authorised to ratify the Convention.

Convention etc.
to be part of
this Act.

(2) The guidelines, schedules and annexes to the Convention shall be construed as being part of this Act in as far as listing of chemicals and their verification is concerned.

Power of
Minister.

(3) The Minister may by notice make such provisions not inconsistent with the provisions of this Act, as are necessary for carrying into effect any of the provisions of the Convention.

(4) The Convention as reproduced in the Schedule to this Act shall form part and be enforceable as part of the laws of Malta.

4. (1) Any person in Malta, or any citizen or permanent resident of Malta, whether in Malta or abroad, who: Offences.

(a) undertakes any activity which is prohibited to a state party under Articles IV and V of the Convention; or

(b) assists, finances or otherwise takes part in any activity which leads to the production, development, acquisition, stockpiling, retaining, direct or indirect transferring of chemical weapons; or

(c) uses chemical weapons; or

(d) engages in military preparations to use chemical weapons; or

(e) assists, encourages or induces, in any way, anyone to engage in any activity prohibited to a state party under the Convention; or

(f) uses transfers or receives any chemical product listed in the schedules to the Convention for purposes other than those specified in Articles IV and V of the Convention or in a manner other than that specified in the Convention; or

(g) is responsible for a chemical production facility which produces any part or the whole of any type of chemical weapon or chemical agent listed in the schedule to the Convention; or

(h) knowingly conceals any knowledge or information on any type of chemical weapons, including old chemical weapons, production facilities or any activities related thereto from the competent authorities,

shall be guilty of an offence against this section, and shall be liable on conviction to a fine (*multa*) of not less than Lm10,000 and not more than Lm100,000 or to imprisonment for a term of not less than eighteen months and not more than fifteen years:

Provided that where the person so found guilty is the director, manager, secretary or other similar officer of an undertaking in the economic interests of which the person found guilty was acting, the said person shall for the purposes of this section be deemed to be vested with the legal representation of the same undertaking which accordingly shall be liable *in solidum* with the person found guilty for the payment of the said fine.

(2) The fine referred to in subsection (1) of this section shall be recoverable as a civil debt in favour of the Government by the Director.

National
Authority.

5. (1) The Minister shall designate or establish a National Authority to serve as an effective liaison with the Organisation pursuant to Article VII of the Convention. The National Authority shall be run by a Director. The Minister shall also designate a person to be the National Authority Inspector.

(2) (a) Any person who has, in accordance with the Convention, been designated by the Technical Secretariat to carry out, or assist in, inspections or visits as inspectors or inspection assistants, shall be an OPCW inspector for the purposes of this Act.

(b) OPCW inspectors shall, for the purposes of this Act, enjoy such privileges and immunities as set out in sub part B of Part II of the Annex on Implementation and Verification of the Convention to this Act.

(3) The National Authority shall:

(i) fulfil the obligations as stated in the Convention in regard to reporting to the Organisation, and in doing so it may request any information from those sectors of the industry, business, or any activity concerned which in the opinion of the Authority may possess such information or be engaged in activities covered by the Convention;

(ii) have the power to inspect any premises, after giving reasonable due notice and after giving the person in charge of the premises sufficient time to explain and justify any action carried out therein, and to give such orders and directions in order to enforce the implementation of the provisions of the Convention;

(iii) be responsible for the compiling of a national register containing information on all types of existing chemicals and chemical production facilities, the nature of the activity carried therein as well as the ultimate destination of the finished products;

(iv) inform and advise Government of any chemical weapons or production facility and formulate a plan for their destruction in accordance with the provisions of the Convention.

(4) (i) The Director may issue to relevant persons identity cards in a form to be approved by him.

(ii) For the purposes of this subsection, "relevant persons" means the National Authority Inspector, the Director, OPCW inspectors and any other class of persons which may be prescribed by regulation.

6. (1) Where any substance or article is developed, produced, stockpiled or is otherwise acquired or retained in contravention of the provisions of section 4, the substance or article shall be forfeited to the Government of Malta. Forfeiture of certain substances.

(2) Any Police officer may, without a warrant, seize any substance or article that is forfeited or that he has reasonable grounds to believe to be forfeited under subsection (1) of this section, and such substance or article shall be retained until the expiration of sixty days after the seizure, or if a prosecution for an offence referred to in section 4 in relation to the substance is instituted before the expiration of that period, until the prosecution is terminated.

(3) Any person who feels aggrieved by any seizure made in accordance with subsection (2) of this section may, within ten days after the expiration of the sixty days therein referred to, make an action by application against the Director in the Civil Court, First Hall, challenging that seizure:

Provided that where in accordance with the same subsection a prosecution is instituted, any question relative to the seizure shall be determined by the Court before which the prosecution is made.

7. (1) The Minister may appoint an analyst for the purposes of this Act. Analyst.

(2) A certificate of an analyst appointed under subsection (1) of this section, stating that he has analysed or examined a substance and stating the result of his analysis or examination, shall be admissible evidence in a proceeding for an offence under this Act and shall be *prima facie* evidence of the facts stated in the certificate and of the correctness of the results of the analysis or examination.

8. (1) Any person, who –

(a) interferes with any on-site instrument or approved equipment with the intention of affecting adversely the operation of the on-site instrument or approved equipment; or

Tampering with instruments.

False or misleading statements etc.

(b) refuses to give any information that may be lawfully requested from him under this Act or makes to any of the relevant persons as specified in subsection (4) of section 5 of this Act a statement, whether orally or written, or presents to the relevant persons a document or record which is to the knowledge of that person false or misleading in a material particular; or

Obstruction of inspectors.

(c) obstructs or hinders a National Authority Inspector or relevant person in the performance of a duty or function in accordance with the verification annex of the Convention or the exercise of a power under this Act or any regulations made thereunder; or

Breach of confidentiality.

(d) produces to any unauthorised person any classified document given to any relevant person, or to the Government of Malta or to the National Authority pursuant to the Convention, or given to the Maltese government or to relevant persons with the stipulation that the document be treated as confidential; or

(e) divulges, makes a record or in any way communicates to any person any information given to any authority under the provisions of the Convention and this Act,

shall be guilty of an offence against this section and shall be liable on conviction to the same penalties as provided in section 4 of this Act and the provisions of the proviso to subsection (1) and of subsection (2) of section 4 shall apply to offences against this section.

(2) For the purposes of this section, the term "relevant persons" means the persons mentioned in subsection (4) of section 5.

Challenge inspections.

9. (1) For the purposes of sections 10 and 11:

"challenge inspection" has the same meaning as in the Convention;

"relevant power" means a power to:—

(a) search a facility, premises, site, land or other location, ship, vessel, aircraft or vehicle;

(b) inspect, examine or take samples of a matter or thing;

(c) examine and take copies or extracts from any relevant document;

- (d) measure any quantity of material;
- (e) verify the proper functioning or calibration of any instrument;
- (f) install or operate an on-site monitoring device;
- (g) interview personnel;
- (h) do any other thing relevant or convenient to be done in order to achieve a relevant challenge inspection purpose.

(2) "Relevant challenge inspection purpose" shall be read as a reference to a purpose of ascertaining whether the purposes of the Convention or this Act and its regulations are being complied with.

10. (1) An OPCW inspector or a team of OPCW inspectors and accompanying National Authority Inspectors may, with the consent of the occupiers or owner of the facility, premises, site, land or other location, ship, vessel, aircraft or vehicle, or otherwise pursuant to a warrant issued under subsection (1) of section 11 of this Act, enter upon or into any facility, premises, site, land or other location, ship, vessel, aircraft or vehicle, and exercise any relevant power for a relevant challenge inspection purpose.

Entry by OPCW inspectors etc.

(2) Where an OPCW inspector or OPCW inspection team and accompanying National Authority Inspectors enter the ship, vessel, aircraft or vehicle under subsection (1) of this section, he or they may for that purpose and for the purpose of exercising any relevant power for a relevant challenge inspection purpose, stop and detain the ship, vessel, aircraft or vehicle.

11. (1) Subject to the provisions of subsection (3) of this section where an information is laid before a Magistrate alleging that access to any facility, premises, site, land or other location within the Maltese territory, or any Maltese ship, vessel, aircraft or vehicle, is necessary for the purpose of fulfilling Malta's obligations under the Convention by the exercise of a relevant challenge inspection purpose, the Magistrate shall issue a warrant for the purpose of this section authorising relevant persons, named in the warrant, with such assistance as necessary, and if necessary by force, to enter upon or into and exercise the relevant powers in relation to the said facility, premises, site, land, other location, ship, vessel, aircraft or vehicle.

Warrants.

(2) A warrant issued under this section shall state —

(a) whether entry is authorised to be made at any time of the day or night; and

(b) a day not being later than one month after the day of issue of the warrant, upon which the warrant ceases to have effect.

(3) Where, by reason of circumstances of urgency, the Director or the Minister considers it necessary to do so, an application for a warrant under subsection (1) may be made by telephone.

Schedule 1
Chemicals.

12. Any person in Malta who, or any Maltese citizen or permanent resident of Malta who, whether in Malta or not,

(a) produces, acquires, retains or uses a Schedule 1 chemical outside Malta unless such production, acquisition, retention or use takes place within the territory of another State Party to the Convention or is undertaken for the purposes of lawfully transporting such chemicals to another State Party; or

(b) exports or attempts to export, a Schedule 1 chemical other than to another State Party for research, medical, pharmaceutical or protective purposes; or

(c) owns or operates a facility which produces, acquires, retains or uses a Schedule 1 chemical, where the facility is not a prescribed single small scale facility, or a prescribed other facility, or a laboratory synthesising Schedule 1 chemicals for research, medical or pharmaceutical purpose in aggregate quantities of less than 100 grams per year,

shall be guilty of an offence against this section and shall be liable on conviction to the same penalties as provided for in section 4 of this Act and the provisions of the proviso to subsection (1) and of subsection (2) of section 4 shall apply to an offence against this section.

Forfeiture
upon
conviction.

13. The forfeiture of any substance or other material which is found to be in contravention of the provisions of this Act or of the Convention, shall be an automatic consequence to a conviction for any offence against any section of this Act.

Authority for
proceedings.

14. No proceedings for any offence against any section of this Act may be instituted without the Authority of the Attorney General.

SCHEDULE

(Section 2)

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

(The text of the Convention is being published with the Maltese Version of the Act.)

Passed by the House of Representatives at Sitting No. 57 of the 28th April, 1997.

Myriam Spiteri Debono
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives.